

# HOUSE BILL No. 1394

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-29; IC 36-2-7-10.

**Synopsis:** Mortgage assignment and securitization disclosure. Requires an assignment of mortgage to be recorded if it is on real property for which the owner is receiving the homestead standard deduction at the time the mortgage is granted. Provides that if a lender assigns a mortgage on real property for which the owner is receiving the homestead standard deduction at the time the mortgage is granted, the lender must notify the borrower, record a mortgage securitization disclosure statement, and pay a fee. Deposits \$0.50 of the fee in the recorder's record perpetuation fund and the remainder in the state general fund. Provides that the fee is \$250, if the transfer involves the securitization of the mortgage with other mortgages, or \$100, if the transfer is not part of a securitization with other mortgages.

**Effective:** July 1, 2009.

**DeLaney**

January 13, 2009, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1394

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A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 32-29-1-12 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 12. (a) As used in this section, "covered mortgage"**  
4 **means a mortgage on real property for which the owner is**  
5 **receiving the homestead standard deduction under IC 6-1.1-12-37**  
6 **at the time the mortgage is granted or a mortgage assignment is**  
7 **made.**

8       **(b) If a covered mortgage is transferred in any manner, the**  
9 **transferor or transferee shall notify the borrower in writing of the**  
10 **transfer not later than thirty (30) days after the transfer. The**  
11 **notice must include the name, address, phone number, and any**  
12 **other contact information for both the transferor and each**  
13 **transferee. The transferor and each transferee shall sign the notice.**  
14 **A person that signs a notice shall attest in writing and under**  
15 **penalties of perjury that to the best of the person's knowledge and**  
16 **belief the information contained in the notice is true and correct.**

17       **(c) To be recorded, a written instrument that transfers or**



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1 assigns a covered mortgage must state that the notice required by  
2 subsection (b) has been provided to the borrower.

3 SECTION 2. IC 32-29-2-1 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A person who  
5 transfers or assigns a mortgage within Indiana shall do so in writing by:

6 (1) noting the assignment or transfer on the record recording the  
7 mortgage; or

8 (2) separate written instrument.

9 A person who transfers or assigns a mortgage as described in this  
10 section shall cause the notation or written instrument to be  
11 acknowledged before an officer authorized to take acknowledgments  
12 of the execution of mortgages.

13 (b) If an assignment pertains to a mortgage on real property for  
14 which the owner is receiving the homestead standard deduction at  
15 the time the mortgage is granted or the assignment is made, the  
16 assignment shall be recorded in the county recorder's office.

17 SECTION 3. IC 32-29-2.5 IS ADDED TO THE INDIANA CODE  
18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2009]:

20 **Chapter 2.5. Mortgage Transfers**

21 **Sec. 1.** As used in this chapter, "borrower" means the grantor  
22 of a mortgage.

23 **Sec. 2.** As used in this chapter, "covered mortgage" has the  
24 meaning set forth in IC 32-29-1-12.

25 **Sec. 3.** As used in this chapter, "lender" means:

26 (1) the grantee of a covered mortgage; or

27 (2) if a covered mortgage has been assigned of record, the last  
28 person to whom the covered mortgage has been assigned of  
29 record.

30 **Sec. 4.** As used in this chapter, "mortgage" means a consensual  
31 interest in real property that secures payment or performance of  
32 an obligation.

33 **Sec. 5.** As used in this chapter, "person" means an individual, a  
34 corporation, or any other legal entity.

35 **Sec. 6.** As used in this chapter, "record" means to record with  
36 the county recorder.

37 **Sec. 7.** As used in this chapter, "transfer" includes any sale,  
38 transfer, or assignment of a covered mortgage to another person.

39 **Sec. 8.** As used in this chapter, "transferee" means a person to  
40 whom a covered mortgage is transferred.

41 **Sec. 9. (a)** If a lender transfers a covered mortgage, the lender  
42 or transferee shall complete a mortgage securitization disclosure

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statement that includes all the following:

(1) The contents of the notice required by IC 32-29-1-12.

(2) A concise statement that the covered mortgage is or is not part of a securitization with other mortgages.

(3) A place for the lender and transferee to sign the statement.

(b) A lender and transferee shall both sign the mortgage securitization disclosure statement. A person that signs a mortgage securitization disclosure statement shall attest in writing and under penalties of perjury that to the best of the person's knowledge and belief the information contained in the mortgage securitization disclosure statement is true and correct.

(c) A mortgage securitization disclosure statement must be recorded in the county recorder's office before an assignment of the covered mortgage may be accepted for recording. The lender or transferee shall also send a copy of the signed mortgage securitization disclosure statement to the department of financial institutions. Each year, the department of financial institutions shall prepare an annual report on the mortgage securitization disclosure statements filed and fees collected under this chapter for the previous year. The report for a year shall be published by posting the report on the official web site for the department before February 1 of the following year.

**Sec. 10. (a) The fee for recording a mortgage securitization disclosure statement is in addition to any other fees for recording a mortgage assignment document. The fee is as follows:**

(1) The fee is two hundred fifty dollars (\$250) if the transfer involves the securitization of the covered mortgage with other mortgages.

(2) The fee is one hundred dollars (\$100) if the transfer is not part of a securitization with other mortgages.

(b) The fee may not be passed on or charged to the mortgagor, and any agreement to the contrary is void and has no effect.

SECTION 4. IC 36-2-7-10, AS AMENDED BY P.L.3-2008, SECTION 256, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) The county recorder shall tax and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders, and shall pay them into the county treasury at the end of each calendar month. The fees prescribed and collected under this section supersede all other recording fees required by law to be charged for services rendered by the county recorder.

(b) The county recorder shall charge the following:

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(1) Six dollars (\$6) for the first page and two dollars (\$2) for each additional page of any document the recorder records if the pages are not larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(3) For attesting to the release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease contained on a multiple transaction document, the fee for each transaction after the first is the amount provided in subdivision (1) plus the amount provided in subdivision (4) and one dollar (\$1) for marginal mortgage assignments or marginal mortgage releases.

(4) One dollar (\$1) for each cross-reference of a recorded document.

(5) One dollar (\$1) per page not larger than eight and one-half (8 1/2) inches by fourteen (14) inches for furnishing copies of records and two dollars (\$2) per page that is larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(6) Five dollars (\$5) for acknowledging or certifying to a document.

(7) Five dollars (\$5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in IC 21-47-3-3 or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars (\$3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for recording a document.

(11) Three dollars (\$3) for each mortgage on real estate recorded, in addition to other fees required by this section, distributed as follows:

(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.

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(B) Two dollars and fifty cents (\$2.50) is to be distributed to the auditor of state on or before June 20 and December 20 of each year as provided in IC 24-9-9-3.

(12) This subdivision applies in a county only if at least one (1) unit in the county has established an affordable housing fund under IC 5-20-5-15.5 and the county fiscal body adopts an ordinance authorizing the fee described in this subdivision. An ordinance adopted under this subdivision may authorize the county recorder to charge a fee of:

(A) two dollars and fifty cents (\$2.50) for the first page; and

(B) one dollar (\$1) for each additional page;

of each document the recorder records.

(13) This subdivision applies in a county containing a consolidated city that has established a housing trust fund under IC 36-7-15.1-35.5(e). The county fiscal body may adopt an ordinance authorizing the fee described in this subdivision. An ordinance adopted under this subdivision may authorize the county recorder to charge a fee of:

(A) two dollars and fifty cents (\$2.50) for the first page; and

(B) one dollar (\$1) for each additional page;

of each document the recorder records.

**(14) A fee in the amount set forth in IC 32-29-2.5 for recording a mortgage securitization disclosure statement shall be collected by the recorder and shall be distributed by the county treasurer as follows:**

**(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.**

**(B) The remainder is to be distributed to the auditor of state on or before June 20 and December 20 of each year for deposit in the state general fund.**

(c) The county recorder shall charge a two dollar (\$2) county identification security protection fee for recording or filing a document. This fee shall be deposited under IC 36-2-7.5-6.

(d) The county treasurer shall establish a recorder's records perpetuation fund. All revenue received under section 10.1 of this chapter and subsection (b)(5), (b)(8), (b)(9), and (b)(10), and fifty cents (\$0.50) from revenue received under subsection (b)(11) **and (b)(14)**, shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment. Money from the fund may not be deposited or transferred into the county general fund and does not revert to the county general fund at the end

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1 of a fiscal year.

2 (e) As used in this section, "record" or "recording" includes the  
3 functions of recording, filing, and filing for record.

4 (f) The county recorder shall post the fees set forth in subsection (b)  
5 in a prominent place within the county recorder's office where the fee  
6 schedule will be readily accessible to the public.

7 (g) The county recorder may not tax or collect any fee for:

8 (1) recording an official bond of a public officer, a deputy, an  
9 appointee, or an employee; or

10 (2) performing any service under any of the following:

11 (A) IC 6-1.1-22-2(c).

12 (B) IC 8-23-7.

13 (C) IC 8-23-23.

14 (D) IC 10-17-2-3.

15 (E) IC 10-17-3-2.

16 (F) IC 12-14-13.

17 (G) IC 12-14-16.

18 (h) The state and its agencies and instrumentalities are required to  
19 pay the recording fees and charges that this section prescribes.

20 (i) This subsection applies to a county other than a county  
21 containing a consolidated city. The county treasurer shall distribute  
22 money collected by the county recorder under subsection (b)(12) as  
23 follows:

24 (1) Sixty percent (60%) of the money collected by the county  
25 recorder under subsection (b)(12) shall be distributed to the units  
26 in the county that have established an affordable housing fund  
27 under IC 5-20-5-15.5 for deposit in the fund. The amount to be  
28 distributed to a unit is the amount available for distribution  
29 multiplied by a fraction. The numerator of the fraction is the  
30 population of the unit. The denominator of the fraction is the  
31 population of all units in the county that have established an  
32 affordable housing fund. The population to be used for a county  
33 that establishes an affordable housing fund is the population of  
34 the county outside any city or town that has established an  
35 affordable housing fund.

36 (2) Forty percent (40%) of the money collected by the county  
37 recorder under subsection (b)(12) shall be distributed to the  
38 treasurer of state for deposit in the affordable housing and  
39 community development fund established under IC 5-20-4-7 for  
40 the purposes of the fund.

41 Money shall be distributed under this subsection before the sixteenth  
42 day of the month following the month in which the money is collected

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1 from the county recorder.  
2 (j) This subsection applies to a county described in subsection  
3 (b)(13). The county treasurer shall distribute money collected by the  
4 county recorder under subsection (b)(13) as follows:  
5 (1) Sixty percent (60%) of the money collected by the county  
6 recorder under subsection (b)(13) shall be deposited in the  
7 housing trust fund established under IC 36-7-15.1-35.5(e) for the  
8 purposes of the fund.  
9 (2) Forty percent (40%) of the money collected by the county  
10 recorder under subsection (b)(13) shall be distributed to the  
11 treasurer of state for deposit in the affordable housing and  
12 community development fund established under IC 5-20-4-7 for  
13 the purposes of the fund.  
14 Money shall be distributed under this subsection before the sixteenth  
15 day of the month following the month in which the money is collected  
16 from the county recorder.

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